

J. Morgan Philpot, Esq.  
(Oregon Bar No. 144811)  
JM PHILPOT LAW, PLLC  
1063 East Alpine Drive,  
Alpine, UT 84004  
(801) 428-2000  
morgan@jmphilpot.com  
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

<p><b>D. JEANETTE FINICUM, ET AL.</b></p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p>v.</p> <p><b>UNITED STATES OF AMERICA, ET AL.</b></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p style="text-align: center;">CASE NO: 2:18-CV-00160-SU</p> <p><b>PLAINTIFFS' CONSENT  MOTION FOR EXTENSION  OF TIME TO FILE RESPONSE  TO STATE DEFENDANTS'  OBJECTIONS (ECF NO. 169)</b></p>
--	--

Plaintiffs, by and through counsel J. Morgan Philpot Esq., file Plaintiffs Consent Motion for and Extension of Time to File Response to State Defendants' Objections (ECF No. 169) pursuant to LR 16-3 and state the following in support thereof:

1. As a preliminary matter, Plaintiffs and the State Defendants have litigated whether amended claims which included adding Defendant Hampton, Trooper #1 and Trooper #2 (hereinafter "Defendants") related back to the Original Complaint for purposes of the statute of limitations *exhaustively* in the instant case.

2. On July 24, 2020, The Magistrate issued a Findings and Recommendation (F&R) which *inter alia* agreed with Plaintiffs position that the claims against Defendants were timely and related back to the filing of the Original Complaint and recommended that Defendants' Motion to Dismiss be denied. (ECF No. 161 at pp.37-43)

3. The parties then conferred about extensions to file objections to the F&R which has extended through the holidays and for which the Court has graciously granted each time.

4. On December 14, 2020, Plaintiffs requested a thirty (30) day extension to file its objections to the F&R. (ECF No. 167).

5. On December 15, 2020, the Court granted Plaintiffs' request for extension as follows:

12/15/2020	168	<b>ORDER:</b> Third Motion for Extension of Time <a href="#">167</a> is GRANTED. The deadline for all parties to file objections to Judge Sullivan's F&R is extended from 12/14/2020 to 01/29/2021. The deadline to file a reply to any objection is extended from 01/27/2021 to 02/26/2021. No further extensions will be allowed. Ordered by Judge Michael W. Mosman. (dls) (Entered: 12/15/2020)
------------	-----	---

6. As a result, the parties were each granted and benefited from the same enlargement of time to file Objections as well as respond to Plaintiff's Objections.

7. Plaintiffs have complied with the Court's order to the extent timely Objections to the Magistrate Judge's F&R were filed on January 29, 2021. (ECF No. 171)

8. Defendants also timely filed objections on January 29, 2021 which is the subject of this request for enlargement of time to respond. (ECF No. 169)

9. Their primary complaint regarding the Magistrate's F&R centers around whether state or federal law is more lenient in resolving whether claims relate back to the filing of the original complaint.

10. As stated above, Plaintiffs' have *exhaustively* briefed the relation back issue leading up to this point. Now, Defendants appear to have raised a new protest that the Court failed to consider the entire body of Oregon state law which they believe constitutes legal error. (ECF No. 169, pp.37-42)

11. To that end, Plaintiffs would like the opportunity to oppose Defendants' objections, however Plaintiffs' counsel and staff have run into conflicting dates and obligations, essentially a

perpetual work crush of competing deadlines that will undoubtedly cause Plaintiffs' response to be filed late.

12. Counsel's staff is small and now Attorney Philpot, Esq. has been confounded by further staff resources familiar with the case seemingly attacked by COVID like symptoms.

13. As such, Plaintiffs' counsel believes good cause exists to request another short extension of time not to exceed four (4) days, to file Plaintiffs' Response to State Defendants' Objections. (ECF No. 169).

14. This will allow counsel to meet competing obligations and deadlines as well as buffer any illness inflicted on his staff and allow Plaintiffs to comply with the Court's filing deadline.

15. Pursuant to LR 7-1, Plaintiffs' counsel certifies that he has conferred in good faith with opposing counsel who indicated he will not oppose such a reasonable request.

16. Plaintiffs seek this extension in good faith. There is no prejudice to the defendants with such a small (4) day delay and no dilatory motive exists.

WHEREFORE, in consideration of the foregoing, Plaintiffs respectfully move this Court to extent the time for Plaintiffs to file their Response to State Defendants' Objections to the Magistrate's Findings and Recommendations (ECF No. 169) by four (4) days to be filed no later than Tuesday, March 2, 2021, and any other and further relief this Court deems proper and just.

RESPECTFULL SUBMITTED,

*Date: February 24, 2021*

*/s/ J. Morgan Philpot*  
J. Morgan Philpot, OSB #144811  
Attorney for Plaintiffs

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2021, I filed the foregoing notice through the CM/ECF system, causing the following individuals to be served by electronic means, as reflected in the Notice of Electronic Filing:

**James S. Smith**

Department of Justice  
Trial Division  
100 SW Market St  
Portland, OR 97201  
Email: [james.s.smith@doj.state.or.us](mailto:james.s.smith@doj.state.or.us)

**Molly S. Silver**

**Thomas F. Armosino**  
Frohnmayr Deatherage, et al.  
2592 E. Barnett Road Medford, OR 97501  
Email: [armosino@fdfirm.com](mailto:armosino@fdfirm.com)

**Casey S. Murdock** Frohnmayr,  
Deatherage, Jamieson, Moore, Armosino &  
McGovern  
2592 East Barnett Road  
Larson Creek Professional Center  
Medford, OR 97504  
Email: [Murdock@fdfirm.com](mailto:Murdock@fdfirm.com)

**JOSEPH HUNT**

Assistant Attorney General

Civil Division  
C. SALVATORE D'ALESSIO, JR.  
Acting Director, Constitutional Tort Staff  
Torts Branch, Civil Division

**RICHARD MONTAGUE**

Senior Trial Counsel  
Constitutional Tort Staff  
Torts Branch, Civil Division

**LEAH BROWNLEE TAYLOR**

United States Department of Justice  
Senior Trial Attorney  
Constitutional Tort Staff  
Torts Branch, Civil Division  
PO Box 7146  
Washington, D.C. 20044  
[Leah.B.Taylor@usdoj.gov](mailto:Leah.B.Taylor@usdoj.gov)  
*Attorney for Defendants*  
*United States of America and Greg*  
*Bretzing*

By: /s/ J. Morgan Philpot